Supreme Court, U.S.
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No. 91-1088

In The

Supreme Court of the United States

October Term, 1991

UNITED MINE WORKERS OF AMERICA,

Petitioner,

v.

CLARENCE M. ADKINS, *et al.*,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF THE CASE

This case arises out of a complaint which was filed by the Respondents on August 22, 1988 against the UMWA. This complaint alleged a breach of duty by the UMWA of fair representation pursuant to Section 301 of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. Section 1985. In addition, the complaint alleged breach of contract claims as the complaint alleged that the Union had breached its Union Constitution, thus resulting in a breach of contract with the Respondents.

The complaint as filed by the Respondents was subsequently amended by the Respondents, specifically deleting certain of the Respondents from the complaint and specifically adding other individuals to the complaint as Plaintiffs in the District Court.

The Respondents mailed interrogatories and requests for discovery to the Defendants on November 14, 1988. The UMWA's counsel subsequently requested additional time to reply to the discovery requests, which request was acquiesced to by the Respondents' counsel.

The UMWA subsequently filed a Motion for Summary Judgment, mailing such on November 30, 1989. Subsequent to the mailing of the Motion for Summary Judgment, the UMWA made a Motion for Protective Order requesting that they not be compelled to respond to the requests for discovery which had been filed by the Respondents.

Contemporaneously with the Motion for Protective Order, the UMWA filed a Memorandum of Law dated March 27, 1989 in which the UMWA alleged that the

discovery requests were not germane to the Motion for Summary Judgment. In said memorandum, the UMWA alleged that the Motion for Summary Judgment was based upon the UMWA's allegations that the Respondents were not employees and were thus not owed a duty by the Union and upon the Union's allegation that the complaint must be dismissed due to the alleged failure of the Respondents to exhaust internal union procedures.

On April 24, 1989 a protective order was issued by the U.S. District Court for the Eastern District of Kentucky relieving the UMWA of the duty to respond to the discovery requests made upon the UMWA by the Respondents. The basis of the protective order was that the Summary Judgment Motion concerned the question of whether the Plaintiffs were employees and whether the Plaintiffs had exhausted their internal Union procedures.

A summary judgment was issued by the U.S. District Court for the Eastern District of Kentucky on February 8, 1990. This summary judgment found that the Respondents were owed a duty of fair representation by the UMWA but found that the actions of the Union did not constitute a breach of the Union's duty of fair representation. The Respondents would point out that the Court, in issuing summary judgment, issued the summary judgment upon an issue which the Court had previously ruled was not properly before the Court on Motion for Summary Judgment.

On March 8, 1990 the Respondents timely appealed the Order of Summary Judgment to the U.S. Court of Appeals for the Sixth Circuit. The notice of appeal read as follows:

> Notice is hereby given that all of the Plaintiffs to this action as set out in the complaint which has been filed herein as well as in all amendments thereto hereby appeal to the U.S. Court of Appeals for the Sixth Circuit from the Order entering summary judgment on behalf of the Defendants as filed on February 8, 1990 and with notice being given of the entry of the Order on February 8, 1990 in this Court.

Thereafter, the UMWA filed a Motion to Dismiss for Jurisdictional Defect, alleging that the notice of appeal was insufficient so as to specify all parties to the appeal. The Court of Appeals ruled that this motion would be heard at the same time as the case on the merits and set briefing schedules and oral argument.

The U.S. Court of Appeals for the Sixth Circuit, with Judge Wellford writing the opinion, ruled that the notice did meet the specificity requirements of Federal Rule of Appellate Procedure 3 (c) and further ruled that the District Court had erred in granting summary judgment to the UMWA. Accordingly, the Sixth Circuit reversed and remanded the decision of the U.S. District Court for the Eastern District of Kentucky.

The UMWA then filed a motion for rehearing and suggestion for rehearing *en banc*. An amended opinion was subsequently issued by the Sixth Circuit again ruling that the notice of appeal met the specificity requirements of Federal Rule of Appellate Procedure 3 (c) and again reversing the summary judgment as issued by the District Court.

The UMWA again requested rehearing and filed a suggestion for *en banc* decision, which request was denied

by the Sixth Circuit of Appeals. The UMWA has now filed the Petition for Writ of Certiorari with which we are concerned herein.

SUMMARY OF THE ARGUMENT

The UMWA has filed a Petition for Writ of Certiorari to the Sixth Circuit United States Court of Appeals. The Respondents would submit that the Petition as filed by the UMWA does not present special and important reasons sufficient for a grant of certiorari by this Court.

While the UMWA has cited cases from the First Circuit, Second Circuit, Sixth Circuit, and Tenth Circuit for its position that a significant conflict exists between the Circuits, the Respondents would submit that a closer reading of these cases does not reveal the degree of conflict which the UMWA has argued. In fact, a closer reading of the case cited by the UMWA from the Tenth Circuit reveals that the Tenth Circuit would actually follow the same reasoning as the Sixth Circuit and the Second Circuit.

The case which the UMWA has cited from the First Circuit is distinguishable on its face. The Respondents would further point out that this Court has refused to grant certiorari on several occasions on this same issue. In light of such, the Respondents would submit that the Petition for a Writ of Certiorari as presented by the UMWA does not present the special and important reasons necessary for the grant of a Writ of Certiorari. Thus, the Respondents would request that the Petition for a Writ of Certiorari from the Sixth Circuit be denied.

ARGUMENT

THE PETITION FOR WRIT OF CERTIORARI AS FILED BY THE UMWA DOES NOT PRESENT SPECIAL AND IMPORTANT REASONS FOR THE GRANTING OF SUCH.

As this Court is well aware, pursuant to Rule 10, a Petition for Writ of Certiorari will be granted only when there are special and important reasons therefor. *Fay v. Noia*, 372 U.S. 391 (1963); *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70 (1955). The Respondents would submit that the questions raised in the Petition as filed by the UMWA do not present special and important reasons sufficient for this Court to grant certiorari.

The UMWA in its Petition argues that this Court should grant certiorari so as to resolve a split between the circuits. In support of such, the UMWA has cited four separate cases from four separate circuits.

The first case cited by the UMWA is the case with which we are concerned herewith. The other three cases are the cases of *Storage Technology Corporation v. U.S. District Court for the District of Colorado*, 934 F. 2d 244 (10th Circuit 1991); *Santos-Martinez v. Soto-Santiago*, 863 F. 2d 174 (1st Circuit 1988); and *Baylis v. Marriott Corporation*, 906 F. 2d 874 (2nd Circuit 1990).

In citing these cases, the UMWA argues that results reached by the Sixth Circuit and the Second Circuit are in direct conflict with decisions rendered by the Tenth Circuit and the First Circuit. However, the Respondents would submit that a closer reading of the cases in question does not reveal the conflict which has been argued by the UMWA.

The Sixth Circuit, in the instant case, held that the language "all of the Plaintiffs to this action as set out in the complaint which has been filed herein as well as in all amendments thereto hereby appeal . . . " was sufficient for the specificity rule of Federal Rule of Appellate Procedure 3 (c). The Second Circuit held that the language "all of the Plaintiffs in this action . . . " was sufficient for the specificity rule of Federal Rule of Appellate Procedure 3 (c).

The UMWA argues that similar language in cases before the Tenth Circuit and the First Circuit was deemed insufficient by these respective circuits. However, as previously stated, a closer reading of the cases in question reveals significant differences in the cases and the rulings by the respective circuits.

In *Storage Technology Corporation v. U.S. District Court for the District of Colorado*, 934 F.2d 244 (10th Circuit 1991) the Tenth Circuit held that a notice of appeal was insufficient so as to specify the ones appealing pursuant to Federal Rule of Appellate Procedure 3 (c). However, at least two significant points exist with regard to *Storage Technology Corporation* which invalidate the arguments of the UMWA.

In *Storage Technology Corporation* the Tenth Circuit was dealing with a bankruptcy case. As stated by the Tenth Circuit, Bankruptcy Rule 8001 (a) requires that a notice of appeal contain the names of all parties. Thus, in *Storage Technology Corporation* the Tenth Circuit was dealing with the stricter rule of pleading as set forth in the Bankruptcy Rules, as opposed to the more liberal rule of Federal Rule of Appellate Procedure 3 (c).

The second significant point is the fact that in *Storage Technology* the Tenth Circuit references *Board of Education of Muhlenburg County v. U.S.*, 920 F.2d 370 (6th Circuit 1990). In *Board of Education of Muhlenburg County* the Sixth Circuit found that the notice of appeal was adequate where the appellants were specified as being the school board and one plaintiff teacher and the other 107 named plaintiffs. The Tenth Circuit, in *Storage Technology*, stated that the notice of appeal in *Board of Education of Muhlenburg County* was sufficient for the specificity requirements of Federal Rule of Appellate Procedure 3 (c) where the notice of appeal stated "and the other 107 individual plaintiffs listed in the complaint herein."

The Respondents would point out that this language which has been recognized as sufficient by the Tenth Circuit is very similar to the language of the instant case, as in the instant case the notice of appeal stated "all of the plaintiffs to this action as set out in the complaint which has been filed herein as well as in all amendments thereto . . . " Thus, a full reading of *Storage Technology Corporation* would indicate that there is no split between the Tenth Circuit and the Second and Sixth Circuits.

The other case which the UMWA cites for its position that there is a conflict between the Circuits is the case of *Santos-Martinez v. Soto-Santiago*, 863 F. 2d 174 (1st Circuit 1988). However, the Respondents would submit that a full reading of this case would again invalidate the arguments of the UMWA.

In *Santos-Martinez* the caption of the appeal said "et al." while the body of the notice said "all plaintiffs". Eight plaintiffs were originally involved in *Santos-*

Martinez. However, some of these plaintiffs withdrew from the case, leaving only three of the plaintiffs appealing. In fact, two of the plaintiffs had withdrawn while the case was still in the district court and so were not parties to the appeal when the appeal was filed.

The First Circuit, in *Santos-Martinez*, stated that due to the fact that various of the plaintiffs had withdrawn, the Court could not determine from the notice who was appealing. Obviously, not "all plaintiffs" were appealing as set out in the notice. Accordingly, the Court found that this notice was insufficient as such failed to specify which parties were appealing as required by Federal Rule of Appellate Procedure 3 (c).

Santos-Martinez is contrasted with the instant case as the instant case does specify which of the plaintiffs did appeal. As set out in the notice of appeal, all of the plaintiffs as set out in the complaint as well as in all amendments thereto did appeal. Thus, as the Sixth Circuit held, the Court was able to sufficiently determine which plaintiffs were appealing to the U.S. Court of Appeals for the Sixth Circuit.

The Respondents would point out that the Ninth Circuit has also reached a similar result as have the Second, Sixth, and Tenth Circuits. In *Gilbreath v. Cutter Biological, Inc.*, 931 F. 2d 1320 (9th Circuit 1991) the Ninth Circuit found that the language "come now plaintiffs, as consolidated into this cause and do hereby appeal the judgment of this court . . . " was sufficient. As the Ninth Circuit stated, the parties to the appeal were accurately listed by describing them as all plaintiffs consolidated below. The Ninth Circuit went on to state that there was

no need to list each appellant individually, since the appellees could have cove:ed [sic] their identities by referring to the records of the lower Court proceedings.

These various decisions of the various circuits are consistent with the ruling of this Court in *Torres v. Oakland Scavenger Company*, 487 U.S. 312 (1988). As this Court stated in *Torres*, the requirements of Federal Rule of Appellate Procedure 3 (c) are met if a litigant is designated with such specificity that the other parties to an action may be put on fair notice of the litigants to an action.

In *Torres*, this Court also states that there may be some other designation, rather than the naming of individual names, which would meet the specificity requirements of Federal Rule of Appellate Procedure 3 (c). The Sixth Circuit recognized that the language in the notice of appeal in the instant matter did meet the specificity requirements as set in Federal Rule of Appellate Procedure 3 (c) and as interpreted by this Court in *Torres*.

As this Court noted in *Foman v. Davis*, 371 U.S. 178 (1962) it is contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities. "The federal rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Conley v. Gibson*, 355 U.S. 41. As the Court went on to state in *Foman*, the rules themselves provide that they are to be construed "to secure the just, speedy, and inexpensive determination of every action." Rule 1.

In light of the above, the Respondents would submit that the Petition for a Writ of Certiorari has not demonstrated the special and important reasons sufficient for the grant of such. The Respondents would further point out that this Court has routinely refused to grant certiorari on several cases in which a similar question has been raised.

Petitions for a Writ of Certiorari have been filed before this Court in *Dura Systems, Inc. v. Rothbury Investments, Limited*, 886 F. 2d 551 (3rd Circuit 1989), cert. denied 110 S.Ct. 844 (1/16/90); *Barnett v. Petro-Tex Chemical Corporation*, 893 F. 2d 800 (5th Circuit 1990), cert. denied 110 S.Ct. 3724 (6/28/90); *Pride v. Venango River Corporation*, 916 F. 2d 1250 (7th Circuit 1990), cert. denied 111 S.Ct. 1696 (4/29/91); *McLemore v. Landry*, 898 F. 2d 996 (5th Circuit 1990), cert. denied 111 S.Ct. 428 (11/13/90); *Appeal of District of Columbia Nurses Association Battle, et al. v. District of Columbia*, 854 F. 2d 1448 (D.C. Circuit 1988), cert. denied 491 U.S. 906 (6/19/89).

In each of the cited cases in the paragraph above, the same issue was raised as in the instant case. This Court has consistently found that the issue presented herein does not constitute a special and important reason for the grant of certiorari. Thus, in light of the arguments set out hereinabove, the Respondents would respectfully request this Court to deny the Petition for a Writ of Certiorari.

CONCLUSION

As a closer reading of the cases cited by the UMWA does not demonstrate a significant conflict between the circuits and as the decision by the Sixth Circuit in the instant case is in conformity with the holding of this Court in *Torres*, the Petition for a Writ of Certiorari does not present special and important reasons for the grant of said petition. Accordingly, the Respondents would respectfully request that the Petition for a Writ of Certiorari in the instant case be denied.

Respectfully submitted,

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